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PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
COMMITTEE ON CODES, REGULATIONS AND LEGISLATION MEETING
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TRANSCRIPT

Dr. Yang Good morning. My name is Patsy Yang. I'm in the Vice Chair of the Committee on Codes, Regulations and Legislation. I have the privilege this morning of calling to order the Codes Committee. I welcome all the members and participants and observers who managed to join us this morning. Would like to remind everyone that this meeting is subject to the Open Meeting Law, and it's being broadcast over the internet, which can be accessed at the department's website NYHealth.Gov. Few suggestions and ground rules. Because this is synchronized captioning please do not speak over one another. The first time you speak, please identify yourself by name and whether you're a staff member of DOH or a council member. This will assist the broadcasting company to record. Again, these are hot mics. Every sound that we make is picked up, whether it's paper or your coffee. As a reminder to the audience, there's a form that needs to be filled out before you enter the meeting, particularly if you wish to speak. This morning, we have two regulations on the agenda for members of the public who wish to speak to any of these regulations. Please limit your comments to less than three minutes, three minutes or less. We're asking one presenter per organization and to deliver your comments promptly after your name is called. The first regulation that we have today is an amendment to Section 405.45 of 10NYCRR Trauma Centers Nurse Reviewer.

Dr. Yang I think we have Mr. Greenberg and Ms. Kazmi in Albany to speak to that.

Mr. Greenberg Thank you so much. My name's Ryan P. Greenberg. I'm the Director of the Bureau of EMS and Trauma Center. I do hear some other voices---

Dr. Yang Can you hold a second?

Dr. Yang We're having a little hard time hearing you.

Mr. Greenberg I'm going to switch things a little bit here. We tried to use conferencing. I'm going to face this way. I apologize. You'll get a side view of me. Do you hear me better now?

Mr. Kraut Just get as close to the mic as you can, please.

Dr. Yang Yeah, it's still pretty.

Mr. Kraut It's okay if we're side view as long as we can hear you.

Mr. Greenberg Sounds good.

Mr. Greenberg My name is Ryan Greenberg. I'm the Director of the Bureau of EMS and Trauma Systems for in New York. This is related to the 405 regulations which governs trauma centers and the regulations that they need to follow or standards that they need to follow. We have had meetings and at the request of the State Trauma Advisory Council, the committee voted to recommend a regulatory change stating that the nurse reviewer did not add that much value to subsequent trauma center verifications after the initial verification. The recommendation of the State Trauma Advisory Council is to have the nurse reviewer for the initial verification, but for subsequent reverification through the American College of Surgeons that it would only have the trauma surgeons as part of the review team, not the nurse reviewer. This is something that the Bureau of EMS, as well as the State Trauma Council agree on that we should have the nurse review a pretty initial verification, but for the reverification that just the trauma surgeons would be acceptable. This implementation of this regulatory change would go into effect, or the change would happen after the regulation goes into effect. They have continued to have that nurse reviewer and probably would continue through 2025. If this does pass, then after the regulation date and most likely probably about six months after they remove the nurse reviewer from that review panel. It's in public comment period right now, but we don't perceive based on how long this has been discussed at the state trauma side much opposition or really any opposition coming back from the public comment period. Happy to take any comments/questions.

Dr. Yang Thank you.

Dr. Yang As Mr. Greenberg noted, this is being presented today for information only, and it will come back to the committee and the full council at a later date.

Dr. Yang At this point, are there any questions from council members or committee members?

Dr. Yang Any members of the public wish to comment on this proposal at this time?

Dr. Yang Great. I think we're done with that.

Dr. Yang We'll present it to the full council for information.

Dr. Yang The next regulation this morning for discussion is 710.1, which is approval of medical facility construction. Again, this is being presented today for discussion and it will come back to the committee and the full council at a later date for adoption. I believe Shelly is going to present this, right?

Ms. Glock Good morning. Yes, this is Shelly from the department.

Ms. Glock Can you hear me?

Dr. Yang Yes.

Ms. Glock This is a repeal and replace of 710.1 approval of medical facility construction, which defines what the certificate of need review process is, and the parameters for those reviews for construction projects that require the approval of the Commissioner under Public Health Law 2802. Generally, this this modernization of the regs, we rework sections logically through the years, different segments had been grafted onto the regs. We regrouped it so that it reads much more logically. We combined some redundant language that pertained to all levels of review and put those in general paragraphs up front. Second thing that this regulation does these revisions increases the project cost thresholds that generally determines the level of review for projects. The total project results were last in 2017. The cost of construction has increased significantly since that time. We believe that these new total project cost thresholds included reflect an appropriate balance between the increased construction costs for large scale projects and the desire to maintain for the department to maintain sufficient oversight while reducing administrative barriers. The third thing that the revision does, the repeal and replace does is we know monetary thresholds alone do not determine the level of review for a certificate of need construction projects. This repeal and replace also revises certain review levels for specific types of projects to reflect the advances and the evolving changes in health care. I'll just generally go over some of the highlights of those changes under full reviews. The previous regulation called for any change in beds or any change in the level of care of beds to go full review. We are proposing changing that that changes to beds or level of care beds would require full review only if the change was a 10% or greater for the facility. That aligns with the requirements for the Health Equity impact Assessment, which calls for a Health Equity Impact Assessment if the change in the number of beds is 10% or more. We also under the full review eliminated specifically specifying that a full review was required for certain services that are no longer considered to be cutting edge. There are more routine medical services such as therapeutic radiology, cardiac catheterization, bone marrow transplant. Those projects that will now be governed by the... We'll still review those projects. They'll just be governed by the project thresholds and whatever the impact on the certificate of the facility, the operating certificate pursuant to the sections in 710.1. We did add, we specified specifically that full review would be required for a lung transplant as part of this repeal and replace under administrative reviews. We did add language allowing projects that are funded primarily by state grants to be approved administratively so they would be excluded for requiring full review even if they're over the dollar threshold. That's really in response to avoiding duplicate reviews. That's something also that I know has come up at recent council meetings we reviewed. We also removed a specified review level for a project involving Emergency Room space. Again, we will still be reviewing those projects, but they'll be governed by the dollar thresholds going forward. That was really an attempt to reduce approval times and support providers in meeting heightened demand for services. Under the limited reviews, we really tried to focus on the most important projects here. One of the changes is exam rooms would now under this proposal, be exempt from clinical space. Projects limited to just projects involving exam rooms would drop to a notice to the department. Exam rooms pose minimal risk as they're used for a limited scope of

service with minimal physical environment requirements. Those were changes that we felt reduced some of the barriers but did not sacrifice any oversight in the department or in ensuring quality and safety at the same time. Another change we're proposing is adding specified review level for mobile van extensions. Previously, that called for administrative review similar to someone establishing an extension clinic as a brick-and-mortar building. We've moved that into the... Proposing to move it into the limited review category as these mobile van extensions generally have fewer generally accepted design and construction standards than their traditional brick and mortar buildings. Finally, under notices to the department, we added a notice eligibility for any limited review application that is self-certified by the applicant's architect. The project doesn't change the operating certificate. Those are really minor construction projects that can be self-certified by the applicant license architect. They do not have an impact on the facility's operating certificate in terms of the number of beds or services or types of services that are being delivered. I'll stop there. That's generally the highlights of the changes. As I said, it's been reorganized. I think it reads much more clearly, starting with general upfront, the types of projects that require a Certificate of Need applications. It then goes into specifically what's required for Certificate of Need projects, just general parameters. It follows with full review, starting with the most stringent full reviews, administrative reviews, limited reviews, and then those types of transactions that are eligible for notice.

Dr. Yang Thank you.

Dr. Yang Questions?

Dr. Yang Jeff.

Mr. Kraut Hi. It's Jeff Kraut, council member. Shelly, I just want to thank you and the staff for getting this to this point. I know we've been talking about making some of these changes for years. Just to remind the council members, it's the outgrowth of coming out of our May, last May's educational retreat, where we reviewed a lot of these basic changes and encouraged the department to come forward with the regulation that we are now looking for. It's not an easy process, as you know, to do a repeal and replace. It takes a lot of people and a lot of eyes to get it done. As we heard, this is for information only. It's going to come back to us. We'll have the opportunity to have additional discussion in public. It's a beginning and not an end. What we're seeing here is recognizing the shift in cost. There are still going to be reviews of these applications. It's just the nature of that review. I'm particularly in heartened to see the ones that are the subject of the state review under a competitive grant or different funding programs where the state has already made a determination they're going to fund someone that it's really not necessary for us to do it. None of these changes impact really the powers of the council. They streamline it. Remember, most, if not all of these were subject or recommendation to the Commission. The Commissioner still, as by and large. I'm correct, Shelly, I think. The Commissioner on all of these matters still will have final approval. We make recommendation. It's not affecting issues regarding establishment. I just not only wanted to again thank you. I'm looking forward to the next set of code that

as we go back. One of the objectives that we say we want to go through different sections of the code to kind of reflect the contemporary models of care delivery. This is just great to have seen this. I want to thank you and the staff and all the people that were involved in this.

Mr. Robinson I just want to thank you as well. I echo Jeff's comments on this being a very significant step forward. Two very minor questions, really. One relates to new technologies that are in the offing right now, some that are experimental, I assume. Jeff and I were talking that these are probably IRB reviews like these transplants relating to pig kidneys, for example, that kind of thing. I'm assuming that once they go off experiment, they will actually, when they're initially put into play in an operational sense, not experimentally, that we would want to take a closer look at the first batch of programs before we put it into some routine process. That's one question and how that fits into this restructuring of CON. This is my pet thing. Does this bring urgent care centers anywhere into the review process at all, or are we still where we have been with regard to urgent care centers?

Ms. Glock This repeal and replace does not address urgent care. Your question about urgent care centers, Mr. Robinson. In response to your first question, that is certainly something as emerging technologies exist, we can certainly look at specifying a level review. The regulation specifies which types of projects require full review, but if you read the administrative review, it says projects are eligible for administrative review. We can always; the department, the council could require specific technologies that we thought... You know, we think pose high risk to be reviewed at a higher level. I also just want to point out that the actual information reviewed for full reviews and administrative reviews are absolutely the same, the same schedules, the same information. The only difference is for a full review it has to come to the EPRC and PHHPC or a recommendation to the Commissioner. The review process is exactly the same for those two.

Mr. Robinson Thank you, Shelly. That's very helpful. I appreciate responses.

Dr. Yang That's great.

Dr. Yang Anyone else from the council or the committee?

Dr. Yang Or the public?

Dr. Yang I think that that concludes the agenda of the Committee on Codes, Regulations and Legislation. Thank you.